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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 WILLIAM DOUGLAS BROEKER,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting  
14 Commissioner of the Social Security  
Administration,

15 Defendant.  
16

CASE NO. 14-cv-05186 JRC

ORDER ON PLAINTIFF'S  
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and  
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.  
19 Magistrate Judge and Consent Form, Dkt. No. 3; Consent to Proceed Before a United  
20 States Magistrate Judge, Dkt. No. 4). This matter has been fully briefed (*see* Dkt. Nos.  
21 11, 12, 13).

22 After considering and reviewing the record, the Court finds that the ALJ's  
23 assessment of the medical opinion of consultative examining psychologist Kathleen S.  
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1 Mayers, PhD, was free of legal error, and supported by substantial evidence in the record.  
2 The ALJ's conclusion that Dr. Mayers did not opine limitations consistent with a finding  
3 of disability under the Act was a conclusion that is supported by substantial evidence in  
4 the record.

### 5 BACKGROUND

6 Plaintiff, WILLIAM DOUGLAS BROEKER, was born in 1975, and was 31 years  
7 old on the alleged disability onset date of February 15, 2007 (*see* Tr. 186-187). Plaintiff  
8 graduated from high school, attending special education classes since grade school (Tr.  
9 34). Plaintiff has work experience as an insulation installer, fast food worker, and  
10 plumber's assistant (Tr. 39-41). He last worked as a plumber's assistant (Tr. 38).  
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12 According to the ALJ, plaintiff has at least the severe impairments of  
13 "degenerative disk disease, epidural fibrosis, ankle arthritis, insomnia, depressive  
14 disorder, anxiety disorder, learning disorder by history, alcohol abuse in partial remission  
15 and pain disorder (20 CFR 404.1520(c))" (Tr. 12).

16 At the time of the hearing, plaintiff was living on acreage in a home with his three  
17 children (Tr. 32-34). His mother and stepfather also lived on the acreage in a different  
18 home (*id.*).

### 19 PROCEDURAL HISTORY

20 Plaintiff filed applications for disability insurance ("DIB") benefits pursuant to 42  
21 U.S.C. § 423 (Title II), and Supplemental Security Income ("SSI") benefits pursuant to  
22 42 U.S.C. § 1382(a) (Title XVI) of the Social Security Act, which were denied initially  
23 and following reconsideration (*see* Tr. 100-02, 106-10, 186-93). Plaintiff's requested  
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1 hearing was held before Administrative Law Judge Rebekah Ross (“the ALJ”) on May 4,  
2 2012 (*see* Tr. 28-68). On June 21, 2012, the ALJ issued a written decision in which the  
3 ALJ concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* Tr.  
4 7-27).

5 In plaintiff’s Opening Brief, plaintiff raises the following issues: (1) Whether or  
6 not the ALJ erred by failing to incorporate the medical opinions of Kathleen S. Mayers,  
7 Ph.D., in to the residual functional capacity (“RFC”) assessment; and (2) Whether or not  
8 the ALJ’s errors were harmless (*see* Dkt. No. 11, p. 1).

#### 9 STANDARD OF REVIEW

10 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
11 denial of social security benefits if the ALJ's findings are based on legal error or not  
12 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
13 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
14 1999)).

#### 15 DISCUSSION

16 Plaintiff argues that the ALJ improperly rejected the functional limitations opined  
17 by consultative examining psychologist Kathleen S. Mayers, PhD. Dkt. No. 11, pp. 2-3.  
18 Specifically, plaintiff argues that the ALJ erred by failing to incorporate Dr. Mayers’  
19 opinion that she was unsure whether or not plaintiff would be able to maintain attention  
20 and concentration during a normal eight-hour work day into the RFC finding (Tr. 512).  
21 Plaintiff also argues that the ALJ erred by failing to adopt Dr. Mayers’ opinion that the  
22 “[mental status examination (“MSE”)] indicates that [plaintiff] is sometimes, but not  
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1 consistently capable of understanding, remembering and carrying out three-stage  
2 instructions (Tr. 511)”. The ALJ gave no reason to reject Dr. Mayers’ opinions. Instead,  
3 the ALJ afforded significant weight to Dr. Mayers’ assessment of plaintiff’s limitations  
4 because it was supported by the longitudinal medical record, MSE, and plaintiff’s  
5 reported activities (*see* Tr. 19).

6 Defendant argues that the ALJ did not include Dr. Mayers’ opinion regarding  
7 plaintiff’s ability to maintain attention and concentration during a normal work day in the  
8 RFC finding because this aspect of Dr. Mayers’ opinion is equivocal. Defendant further  
9 argues that the ALJ appropriately accounted for the results of the MSE by limiting  
10 plaintiff to unskilled work, with simple repetitive tasks because Dr. Mayers concluded  
11 that plaintiff’s poor performance on the MSE suggested the possibility of less than  
12 optimal effort and symptom exaggeration (Tr. 511-12). This Court agrees.

14 The ALJ reasonably omitted from the RFC finding Dr. Mayers’ opinion regarding  
15 plaintiff’s ability to maintain attention and concentration during a work day, because this  
16 opinion was ambivalent, and, therefore, of limited probative value (Tr. 17-19, 512).

17 With regard to plaintiff’s ability to understand, remember, and carryout three-stage  
18 instructions, as noted by defendant, an ALJ’s findings need only be consistent with a  
19 doctor’s opined limitations, not identical to them. *See Turner v. Comm’r of the Soc. Sec.*  
20 *Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010).

21 Here, as in *Turner*, it is not clear from the record that Dr. Mayers actually  
22 concluded plaintiff had limitations consistent with a finding of disability (*see* Tr. 511-12).  
23 *See id.* at 1222-23 (observing that it was not clear that the treating physician concluded  
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1 Turner had limitations consistent with a finding of disability, and noting that Turner had  
2 been able to “maintain himself without severe problems with his [mental impairment] by  
3 isolating himself from society and living out in the county”). This is because portions of  
4 Dr. Mayers’ opinion were equivocal, and because Dr. Mayers qualified her assessment  
5 with the conclusion that plaintiff may have exaggerated his symptoms (*see* Tr. 511-12).

6 Although Dr. Mayers noted that the results of the MSE indicated plaintiff was  
7 “sometimes, but not consistently capable of understanding, remembering, carrying out  
8 three-stage instructions”, Dr. Mayers also explained that the “[f]act that on two  
9 occasions, [plaintiff] could recall only one of three simple directions just provided to him  
10 seems unusual and suggests the possibility of less than optimal efforts, which is of great  
11 concern. Symptom exaggeration is possible (Tr. 512).” In doing so, Dr. Mayers  
12 expressed doubt regarding the validity of the MSE results (Tr. 511-12).

13 As such, the ALJ’s conclusion that Dr. Mayers’ assessment of plaintiff’s  
14 functioning did not include limitations consistent with a finding of disability is a logical  
15 inference. *See Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982) (*citing Beane v.*  
16 *Richardson*, 457 F.2d 758 (9th Cir. 1972))( An ALJ may “draw inferences logically  
17 flowing from the evidence”). The ALJ was not required to offer any reason to reject Dr.  
18 Mayers’ medical opinion because the ALJ did not reject Dr. Mayers’ conclusions. *See*  
19 *Turner*, 613 F.3d at 1223.

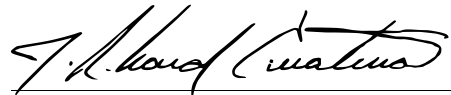
20 For these reasons, the Court finds that the ALJ’s determination that plaintiff was  
21 not disabled under the Act is free of legal error, and supported by substantial evidence in  
22 the record. *See Bayliss*, 427 F.3d at 1214 n.1.  
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CONCLUSION

Based on these reasons and the relevant record, the Court **ORDERS** that this matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

**JUDGMENT** should be for **DEFENDANT** and the case should be closed.

Dated this 20<sup>th</sup> day of August, 2014.

A handwritten signature in blue ink, reading "J. Richard Creatura", is written over a horizontal line.

J. Richard Creatura  
United States Magistrate Judge